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October 1, 2007

HAND-DELIVERED

Attorney General Terry Goddard
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007

Senate President Timothy S. Bee
Arizona State Senate
1700 West Washington Street
Phoenix, AZ 85007-2890

House Speaker James P. Weiers
Arizona House of Representatives
1700 West Washington Street
Phoenix, AZ 85007-2890

**Re: Gilbert Unified School District No. 41 v. State of Arizona, State Board of
Education, and Tom Horne, Superintendent of Public Instruction**

Dear Attorney General Goddard, President Bee, and Speaker Weiers:

This firm represents Gilbert Unified School District No. 41 ("Gilbert Public Schools") in connection with its challenge to the constitutionality of Arizona's Career Ladder Program ("the Program"), A.R.S. § 15-819 *et seq.*

I am writing pursuant to A.R.S. § 12-1841 to provide you with notice of a lawsuit we filed today in Superior Court on Gilbert Public Schools' behalf. The lawsuit contends that the Career Ladder Program violates the Arizona Constitution's General and Uniform Clause, which provides that "[t]he Legislature shall enact such laws as shall provide for the establishment of a general and uniform public school system," Ariz. Const., Art. XI, § 1, as well as the Arizona Constitution's prohibition against special legislation, Ariz. Const., Art. IV, Pt. 2, § 19, which exists to prevent special benefits from being given to certain groups but not to others. A copy of

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Terry Goddard
James P. Weiers
Timothy S. Bee
October 1, 2007
Page 2

the Verified Complaint for Special Action, Declaratory and Injunctive Relief and a Notice of Claim of Unconstitutionality are attached.

The Career Ladder Program is a performance-based compensation plan that provides incentives to teachers in participating school districts. Teachers in participating districts receive increased pay based on student achievement and professional development, rather than on seniority and educational credits. Only 28 Arizona school districts currently are permitted to participate in the Program, which provided over \$74 million in additional funding during the 2006-2007 school year to those few participating districts. Arizona's remaining 209 school districts, including Gilbert Public Schools, are unable to participate in the Program and enjoy its benefits because the Legislature has not appropriated additional funding for expansion of the Program since 1994, even though the Program was intended for statewide application when it was originally formulated over twenty years ago.

Last year, Gilbert Public Schools contacted the Arizona Department of Education to express its desire to participate in the Program, but was informed that it could not because there were no funds available to expand the Program beyond the 28 districts currently participating. Notably, the same 28 districts have received funding under the program since at least 1994, to the exclusion of the other 209 districts in the state. During the 2007 Legislative session, Gilbert Public Schools attempted to persuade the Legislature to appropriate additional funds for the Program, but was unsuccessful, thus, Gilbert Public Schools has no alternative but to resort to the court to resolve this inequity.

We believe that the court will conclude that the Program as it is currently operated is unconstitutional and will enjoin its continued operation. While Gilbert Public Schools seeks to have the Program declared unconstitutional and its operation enjoined because that is the only remedy available to the court, it continues to believe a far better resolution would be to revise the Program so all interested districts could participate.

If you would like further information on this matter, I would be happy to meet with you or your staff.

Very truly yours,


Lee Stein

Enclosures

Paul F. Eckstein (#1822)
Lee Stein (#12368)
Rebecca K. Setlow (#15915)
M. Bridget McMullen (#23356)
PERKINS COIE BROWN & BAIN P.A.
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OCT 01 2007



MICHAEL K. JEANES, CLERK
M. BOND
DEPUTY CLERK

Attorneys for Plaintiff

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

GILBERT UNIFIED SCHOOL
DISTRICT NO. 41,

Plaintiff,

v.

STATE OF ARIZONA, STATE
BOARD OF EDUCATION, and TOM
HORNE, Superintendent of Public
Instruction, in his official capacity,

Defendants.

No. CV 2007-017981

**VERIFIED COMPLAINT FOR
SPECIAL ACTION, DECLARATORY
AND INJUNCTIVE RELIEF**

Gilbert Unified School District No. 41 ("Gilbert Public Schools") alleges:

INTRODUCTION

1. Arizona's performance-incentive program for teachers, known as the "Career Ladder Program" (or the "Program"), described in A.R.S. § 15-918 *et seq.*, provided over \$74 million in funding during the 2006-2007 school year to the 28 Arizona school districts participating in the Program for the purpose of allowing those 28 Arizona school districts (but none of the other 209 Arizona school districts) to attract, retain, and motivate good and experienced teachers and to provide the students in those 28 districts the educational benefits of the Program.

1 2. In October 2006, Gilbert Public Schools contacted the Arizona Department
2 of Education (“DOE” or the “Department”) and expressed its desire to apply to participate
3 in the Program so that it too could enjoy the Program’s benefits. In response, the DOE
4 informed Gilbert Public Schools that it could *not* apply for inclusion in the Program
5 because there were no funds available to expand the Program beyond the districts
6 currently participating. [See Exhibits 1-2]

7 3. Accordingly, during the 2007 Legislative session, Gilbert Public Schools
8 requested that the Legislature appropriate additional funds to the Career Ladder Program
9 so as to allow for expansion of the Program. However, the Legislature did not appropriate
10 additional funds allowing for the expansion of the Program.

11 4. When the Career Ladder Program was first created by the Arizona
12 Legislature more than 20 years ago, expansion of the Program statewide was envisioned.
13 Yet, since 1994, the Arizona Legislature has not appropriated the additional funds that
14 would allow new districts into the Program despite the clear intent to expand the Program
15 statewide, nor has it taken any steps to permit nonparticipating districts to benefit from the
16 existing funding.

17 5. Just 28 school districts (out of 237 statewide) participate in the Career
18 Ladder Program and receive funding through the Program.

19 6. Nonparticipating districts such as Gilbert Public Schools are at a
20 disadvantage when it comes to attracting and retaining good and experienced teachers.

21 7. The disparity in funding created by the Program violates the Arizona
22 Constitution’s requirement that the State’s school-financing scheme be “general and
23 uniform,” as well as its prohibition against special legislation. Gilbert Public Schools
24 brings this action to have the Career Ladder Program declared unconstitutional pursuant to
25 Ariz. Const. Art. XI, § 1 and/or Art. IV, Pt. 2, § 19 and to prohibit and enjoin the State
26 Board of Education and Superintendent of Public Instruction from continuing their
27 unconstitutional administration of the Career Ladder Program.

28

1 **PARTIES AND JURISDICTION**

2 8. Gilbert Public Schools is a political subdivision located in Maricopa
3 County, Arizona. Gilbert Public Schools currently has an enrollment of more than 35,000
4 students and employs nearly 2,500 teachers.

5 9. Gilbert Public Schools has attempted to apply for inclusion in the Program
6 but has been denied the opportunity to apply.

7 10. Gilbert Public Schools has also requested that the Legislature appropriate
8 additional funds to allow for expansion of the Program but the Legislature has refused to
9 do so.

10 11. Exclusion from the Program injures Gilbert Public Schools in, among other
11 ways, its ability to attract and retain good and experienced teachers and to provide its
12 students the educational benefits of the Program. Gilbert has already suffered irreparable
13 injury by virtue of its exclusion from the Program, and will continue to suffer irreparable
14 injury so long as it is excluded from the program.

15 12. Defendant State of Arizona bears responsibility for funding public schools
16 within Arizona pursuant to Ariz. Const. Art. XI, § 1.

17 13. Defendant State Board of Education bears responsibility for “[e]xercis[ing]
18 general supervision over and regulat[ing] the conduct of the public school system,”
19 “[r]ecommend[ing] to the legislature changes or additions to the statutes pertaining to
20 schools,” and “[a]id[ing] in the enforcement of laws relating to schools,” pursuant to
21 A.R.S. § 15-203(1), (8), & (11). Additionally, the State Board of Education is expressly
22 charged with “approv[ing] additional districts to budget for a career ladder program . . .
23 until all interested and qualified districts are included.” Ariz. Sess. Laws ch. 319 § 16.

24 14. Defendant Tom Horne, Superintendent of Public Instruction, bears
25 responsibility for “[s]uperintend[ing] the schools of this state,” “apportion[ing] to the
26 several counties the monies to which each county is entitled for the year,” and
27
28

1 “[e]xecut[ing] . . . the policies which have been decided upon by the state board,”
2 pursuant to A.R.S. § 15-251(1), (3) & (5).

3 15. This Court has jurisdiction over this action pursuant to Ariz. Const. Art. 6,
4 § 18 and R. Proc. Sp. Act. 1, as well as A.R.S. § 12-1831 *et seq.* and Ariz. R. Civ. P. 57,
5 to declare the Career Ladder Program, as implemented, unconstitutional and grant the
6 special action relief sought herein.

7 FACTUAL BACKGROUND

8 I. History of the Program

9 16. In 1985, in order to improve the ability of school districts to attract, retain,
10 and motivate good teachers, the Arizona Legislature created the Program as a five-year
11 pilot program. In addition to providing teachers with the opportunity to earn higher
12 salaries, the Program was designed to provide teachers with opportunities for professional
13 growth and career advancement without leaving the classroom.

14 17. Initially, seven school districts were approved to participate in the pilot
15 program. Seven additional school districts were approved between 1986 and 1987,
16 bringing the total number of districts in the pilot program to fourteen.

17 18. In 1990, at the end of the pilot program, legislation was passed, authorizing
18 expansion of the Career Ladder Program. Seven additional school districts were approved
19 to participate in 1992-93, bringing the total number of districts in the Program to 21.

20 19. In 1992, the Arizona Legislature authorized further expansion of the
21 Program, and another seven school districts were approved in 1993-94, bringing the total
22 number of districts participating in the Program to 28.

23 20. The 1992 legislation stated that “[b]eginning in fiscal year 1994-1995, the
24 [S]tate [B]oard [of Education] is authorized to approve additional districts to budget for a
25 career ladder program . . . *until all interested and qualified districts are included.*” Ariz.
26 Sess. Laws ch. 319 § 16 (emphasis supplied).

27 21. However, the 1992 legislation also limited the State Board of Education’s
28 ability to authorize expansion of the Program. Specifically, the 1992 legislation provided

1 that the Board could expand the Career Ladder Program “*only* to the extent that the
2 legislature appropriates, in advance, sufficient monies to cover the costs.” 1992 Ariz.
3 Sess. Laws ch. 246 § 3, *amending* 1990 Ariz. Sess. Laws ch. 319 § 16 (emphasis
4 supplied).

5 22. Although the clear intent of the 1992 legislation was to allow for statewide
6 expansion of the Program through additional appropriations, no additional appropriations
7 have been made since 1994. Accordingly, no further expansion has ever been authorized.
8 The 28 school districts that were approved to participate in the Career Ladder Program as
9 of 1994 continue to be the only school districts participating in the Program today.

10 23. On October 4, 2006, Gilbert Public Schools sent a letter to the Career
11 Ladder Coordinator at the DOE, asking it to provide Gilbert with the forms necessary to
12 apply to participate in the Career Ladder Program. [Exhibit 1] In response, the DOE
13 informed Gilbert Public Schools that it could *not* apply for inclusion into the Program
14 because there are no funds available to expand the Program to allow for participation by
15 additional districts. [Exhibit 2]

16 24. During the 2007 Legislative session, Gilbert requested that the Legislature
17 appropriate additional funds so as to allow for expansion of the Program, but the
18 Legislature refused to appropriate such additional funds.

19 **II. How the Program Works**

20 25. The Career Ladder Program is a performance-based compensation plan that
21 provides incentives to teachers in the 28 participating school districts. The Program is an
22 alternative to the traditional pay structure, and teachers who participate in the Program
23 forgo the customary salary increases based on seniority and educational credits in
24 exchange for compensation based on student achievement and professional development.
25 Although teachers in Career Ladder districts may opt not to participate in the Program, at
26 least 50% of the teachers in the district must participate in the Program in any given year
27 or the district will lose its Career Ladder funding.

28

1 26. Each school district constructs its own "ladder," which includes progressive
2 "levels" and progressive "steps" within each level, and places teachers on the ladder
3 according to their performance. Each level and step of the ladder has its own salary range,
4 and there must be specific criteria for placement at each level and step. Additionally, the
5 "ladder" must provide for:

6 (a) Increasingly higher levels of student academic progress as measured
7 by objective criteria;

8 (b) Increasingly higher levels of teaching skills;

9 (c) Increasingly higher levels of teacher responsibility;

10 (d) Professional growth; and

11 (e) Equal teacher pay for equal teacher performance.

12 **III. How the Program is Funded**

13 27. Financing for the Career Ladder Program is set forth in A.R.S. §§ 15-918.04
14 and 918.05.

15 28. Under A.R.S. §§ 15-918.04 and 918.05, funding for the Program is derived
16 by a formula based on student count. Once the Program has been fully implemented,
17 Career Ladder districts may increase their base funding level by 5.5%. A portion of the
18 funding is derived from an increase in the local property tax; state-appropriated funding
19 provides the remainder.

20 29. This 5.5% increase in base level funding results in a significant increase in
21 funds for teacher compensation to participating districts.

22 30. For example, in 2005-2006, the 28 participating districts were allowed to
23 budget an additional \$68 million in total funds for the Career Ladder Program, more than
24 \$35 million of which was funded by the State.

25 31. In 2006-2007, the 28 participating districts were allowed to budget an
26 additional \$74 million for the Program, more than \$38 million of which was funded by the
27 State.

1 32. The impact of the Career Ladder Program on the individual districts
2 participating in the Program is also significant.

3 33. For example, neighboring participating districts such as Chandler and Mesa
4 were allowed to budget more than \$6 million and \$15 million, respectively, for the
5 Program in the 2005-2006 school year and received more than \$2.5 million and \$9.5
6 million in state funding for the Program.

7 34. In 2006-2007, Chandler and Mesa were allowed to budget more than \$7
8 million and \$16.8 million, respectively, and received state funding in excess of \$3 million
9 and \$10 million.

10 35. School districts excluded from the Program, such as Gilbert Public Schools,
11 are at a disadvantage in attracting and retaining good and experienced teachers because
12 they do not receive the additional funding provided by the Program to compensate such
13 teachers. In particular, Gilbert Public Schools has suffered irreparable injury in that it has
14 lost teachers to neighboring participating districts because those districts were able to
15 offer more money as a result of their participation in the Career Ladder Program. Gilbert
16 will continue to suffer irreparable injury so long as it is excluded from the Program.

17 **IV. The Program Violates the Arizona Constitution's "General and Uniform"**
18 **Requirement**

19 36. The Arizona Constitution provides that "[t]he Legislature shall enact such
20 laws as shall provide for the establishment of a *general and uniform* public school system
21" Ariz. Const. Art. XI, § 1 (the "General and Uniform Clause") (emphasis supplied).

22 37. This provision, the General and Uniform Clause, requires that the
23 Legislature's funding scheme provide sufficient funds to educate children on substantially
24 equal terms. School financing systems which themselves create gross disparities are *not*
25 general and uniform.

26 38. The Program established by the Legislature results in significant funding
27 disparities between participating and non-participating districts and thus violates the
28 General and Uniform Clause.

39. As set forth above, 28 school districts participate in the Program; 209 have been denied the opportunity to participate since expansion of the Program ceased in 1994. In 2005-06, districts participating in the Career Ladder Program were able to increase their budgets by a total of more than \$68 million and received state funding in excess of \$35 million for the Program. In 2006-2007, districts participating in the Career Ladder Program were able to increase their budgets by a total of more than \$74 million, and received state funding in excess of \$38 million for the Program.

V. The Program Violates the Arizona Constitution’s Prohibition Against Special Legislation.

40. The Arizona Constitution provides that “[n]o local or special laws shall be enacted . . . [g]ranting to any corporation, association, or individual, any special or exclusive privileges, immunities, or franchises.” Ariz. Const. Art. IV, Pt. 2, § 19. The purpose of Ariz. Const. Art. IV, Pt. 2, § 19 is to prevent special benefits from being bestowed upon certain locations or groups, but not others.

41. Legislation is constitutionally invalid special legislation where the classification in the legislation is not: (1) rationally related to a legitimate legislative purpose; (2) sufficiently general to encompass all members similarly situated; and (3) sufficiently elastic to allow members to move in and out of the class.

42. The Program, which bestows special benefits upon just 28 school districts (out of 237 statewide), violates the Arizona Constitution's prohibition against special legislation, set forth in Ariz. Const. Art. IV, Pt. 2, § 19. As implemented, the Program is not rationally related to a legitimate legislative purpose, is not sufficiently general to encompass all similarly situated school districts, and is not sufficiently elastic to allow districts to move in and out of the class.

FIRST CLAIM FOR RELIEF
(DECLARATORY JUDGMENT RELIEF: GENERAL AND UNIFORM CLAUSE)

43. Plaintiff Gilbert Public Schools incorporates in this claim all of the foregoing allegations.

44. Pursuant to A.R.S. §12-1831 *et seq.* and Ariz. R. Civ. Pro. 57, Plaintiff—as a party whose rights, status or other legal relations are affected by the statute—seeks an order from this Court declaring the Career Ladder Program (A.R.S. §§ 15-918 to 918.05), as implemented, unconstitutional in violation of Art. XI, § 1 of Arizona’s Constitution.

45. This is an actual and justiciable controversy and such judgment or decree will terminate the uncertainty and controversy giving rise to this proceeding as required by A.R.S. § 12-1836.

SECOND CLAIM FOR RELIEF
(DECLARATORY JUDGMENT RELIEF: SPECIAL LEGISLATION)

46. Plaintiff Gilbert Public Schools incorporates in this claim all of the foregoing allegations.

47. Pursuant to A.R.S. §12-1831 *et seq.* and Ariz. R. Civ. Pro. 57, Plaintiff—as a party whose rights, status or other legal relations are affected by the statute—seek an order from this Court declaring the Career Ladder Program (A.R.S. §§ 15-918 to 918.05), as implemented, unconstitutional in violation of Art. IV, Pt. 2, § 19 of Arizona’s Constitution.

48. This is an actual and justiciable controversy and such judgment or decree will terminate the uncertainty and controversy giving rise to this proceeding as required by A.R.S. § 12-1836.

THIRD CLAIM FOR RELIEF
(SPECIAL ACTION RELIEF IN THE NATURE OF PROHIBITION AGAINST
THE STATE BOARD OF EDUCATION AND SUPERINTENDENT OF PUBLIC INSTRUCTION)

49. Plaintiff Gilbert Public Schools incorporates in this claim all of the foregoing allegations.

50. Because the Career Ladder Program (A.R.S. §§ 15-918 to 918.05), as implemented, is unconstitutional, Defendants State Board of Education and Superintendent of Public Instruction lack jurisdiction or legal authority to continue administration of the Career Ladder Program. Plaintiffs are entitled to special action relief

1 pursuant to R. Pro. Sp. Act. 3(b) prohibiting and enjoining the State Board of Education
2 and Superintendent of Public Instruction from continuing to administer the Career Ladder
3 Program.

4 **FOURTH CLAIM FOR RELIEF**
5 **(INJUNCTIVE RELIEF)**

6 51. Plaintiff Gilbert Public Schools incorporates in this claim all of the
7 foregoing allegations.

8 52. In the event that declaratory and special action relief are insufficient to
9 prevent the unconstitutional administration of the Career Ladder Program, Plaintiff
10 requests, in the alternative, temporary, preliminary and permanent injunctive relief to
11 enjoin the State Board of Education and Superintendent of Public Instruction from
12 administering the Career Ladder Program in violation of Arizona's Constitution.

13 53. As alleged in this Complaint, the Career Ladder Program is unconstitutional.
14 Plaintiff thus has a strong likelihood of success on the merits and will continue to suffer
15 irreparable harm if relief is not granted.

16 54. Given the nature of Plaintiff's claim that the Career Ladder Program is
17 unconstitutional, Plaintiff lacks an adequate remedy at law.

18 55. The irreparable injury to Plaintiff is substantial, and granting the requested
19 injunctive relief will not cause the State Board of Education or Superintendent of Public
20 Instruction to suffer any harm.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff Gilbert Public Schools requests relief as follows:

23 A. That the Court issue an order declaring the Career Ladder Program
24 (specifically, A.R.S. §§ 15-918 to 918.05) unconstitutional in violation of Art. XI, § 1
25 and/or Art. IV, Pt. 2, § 19 of Arizona's Constitution.

26 B. That the Court grant Plaintiff special action relief prohibiting the State
27 Board of Education and Superintendent of Public Instruction from continuing their
28 unconstitutional administration of the Career Ladder Program.


1 C. That the Court grant Plaintiff injunctive relief enjoining the State Board of
2 Education and Superintendent of Public Instruction from continuing their unconstitutional
3 administration of the Career Ladder Program.

4 D. That the Court grant Plaintiff their attorneys' fees and costs in challenging
5 the unconstitutionality of the Legislation pursuant to A.R.S. §§12-348 and 12-1840, R.
6 Pro. Sp. Act. 4(g), and the private attorney general doctrine.

7 E. For such other and further relief as may be appropriate.

8 Dated: October 1, 2007

9 PERKINS COIE BROWN & BAIN P.A.

10
11 By: 
12 Paul F. Eckstein
13 Lee Stein
14 Rebecca K. Setlow
15 M. Bridget McMullen
16 2901 N. Central Avenue, Suite 2000
17 Phoenix, AZ 85012-2788

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Attorneys for Plaintiff

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VERIFICATION

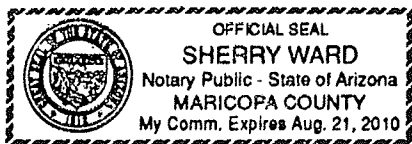
STATE OF ARIZONA)
) ss.
County of Maricopa)

Clyde R. Dangerfield, being first duly sworn upon oath, deposes and says:

That he is the Assistant to the Superintendent of Gilbert Public Schools, and in such capacity is authorized to make this verification for and on behalf of said Plaintiff; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true based on his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and, as to those matters, he believes them to be true.

Clyde R. Dangerfield
Clyde R. Dangerfield

SUBSCRIBED AND SWORN to before me this 25 day of September, 2007.



Sherry Ward
Notary Public

My Commission Expires:

8/21/10

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EXHIBIT 1



Gilbert Public Schools

COPY

Superintendent
Bradley K. Barrett,
Ph.D.

**GPS.Governing
Board**

President
Thad V. Stump
Clerk
Helen D. Hollands
Members
Van J Dunham, Ph.D.
Traci L. Klein
Linda Rollans

October 4, 2006

Lisa Kelley
Career Ladder Coordinator
Academic Achievement Division
Arizona Department of Education
1535 West Jefferson Street, Bin 31
Phoenix, Arizona 85007

Re: Application for Initial Program Approval in the Career Ladder Program

Dear Ms. Kelley:

Pursuant to A.R.S. §15-918, the Gilbert School District Governing Board is interested in applying for initial program approval and ultimately becoming a fully participating district in the Career Ladder Program.

We have visited the Arizona Department of Education's website to obtain the application materials and instructions necessary to apply for initial approval for the 2006-2007 school year. However, the only materials available on that site are *reapplications* for those districts already participating in the Career Ladder Program. No information is provided to districts that wish to apply for the first time and join the 28 other districts already participating in the program.

Because the November 15 deadline for applications is fast approaching, I would appreciate you providing me the application and instructions necessary for Gilbert School District to apply for initial program approval for the 2006-2007 year, or directing me to the location in which I might find such materials.

Sincerely,

GILBERT PUBLIC SCHOOLS

Nikki Blanchard
Assistant Superintendent

xc: Brad Barrett, Ph.D., Superintendent

EXHIBIT 2



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

October 27, 2006

Nikki Blanchard
Assistant Superintendent
Gilbert Public School
140 S. Gilbert Rd.
Gilbert, AZ 85296

Re: Inquiry to Participate in the Arizona Career Ladder Program

Dear Ms. Blanchard:

Thank you for your inquiry into participating in the Arizona Career Ladder Program. Unfortunately at this time no new districts are being allowed to petition for funding.

In 1994 legislation passed freezing the funding contributions for Career Ladder. Since that time no additional funds have been appropriated to increase the number of districts allowed to participate in the program.

I will keep your letter on file as verification of your interest in the program and report to you if there are any changes in funding appropriations for next year.

Best Wishes,

A handwritten signature in cursive script that reads "Lisa Kelley".

Lisa Kelley, NBCT
Education Program Specialist

cc: Clyde Dangerfield

1 Paul F. Eckstein (#1822)
Lee Stein (#12368)
2 Rebecca K. Setlow (#15915)
M. Bridget McMullen (#23356)
3 PERKINS COIE BROWN & BAIN P.A.
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OCT 01 2007



MICHAEL K. JEANES, CLERK
M. BOND
DEPUTY CLERK

6 Attorneys for Plaintiff

7
8 ARIZONA SUPERIOR COURT
9 MARICOPA COUNTY

10 GILBERT UNIFIED SCHOOL
11 DISTRICT NO. 41,

12 Plaintiff,

13 v.

14 STATE OF ARIZONA, STATE
15 BOARD OF EDUCATION, and TOM
16 HORNE, Superintendent of Public
17 Instruction, in his official capacity,

18 Defendants.

No. CV2007-017981

19
20 NOTICE OF CLAIM OF
21 UNCONSTITUTIONALITY

22 Plaintiff Gilbert Unified School District No. 41 ("Gilbert Public Schools") hereby
23 submits this Notice of Claim of Unconstitutionality regarding A.R.S. §§ 15-918 to -
24 918.05, the "Career Ladder Program," to the Attorney General, to James P. Weiers in his
25 capacity as the Speaker of the House of Representatives, and to Timothy S. Bee in his
26 capacity as the President of the Senate. As required by A.R.S. § 12-1841, Plaintiff
27 provides the following information:
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1. Plaintiff is represented by the following attorneys:

Paul F. Eckstein
Lee Stein
Rebecca K. Setlow
M. Bridget McMullen
PERKINS COIE BROWN & BAIN P.A.
2901 N. Central Avenue, Suite 2000
Phoenix, AZ 85012-2788

2. The case name, court name, caption, and case number are set forth above.


3. Plaintiff asserts that the Career Ladder Program, A.R.S. §§ 15-918 to - 918.05, violates the General and Uniform Clause of the Arizona Constitution, Art. XI, § 1, because it results in significant funding disparities between participating and non-participating districts. Plaintiff also asserts that the Career Ladder Program violates the Local and Special Law Clause of the Arizona Constitution, Art. IV, Pt. 2, § 19, because it is not rationally related to a legitimate legislative purpose, is not sufficiently general to encompass all similarly situated school districts, and is not sufficiently elastic to allow districts to move in and out of the class.

4. A Verified Complaint for Special Action, Declaratory and Injunctive Relief is being filed concurrently with this notice.

5. A hearing has not yet been set in this matter.

1 Dated: October 1, 2007

PERKINS COIE BROWN & BAIN P.A.

3 By: 

4 Paul F. Eckstein

5 Lee Stein

6 Rebecca K. Setlow

7 M. Bridget McMullen

8 2901 N. Central Avenue, Suite 2000

9 Phoenix, AZ 85012-2788

10 Attorneys for Plaintiff

11 LEGAL13552509.1

ARIZONA'S CAREER LADDER PROGRAM

- Arizona's Career Ladder Program is unconstitutional. Disproportionate funding provided to school districts cannot be considered "general and uniform," as the Arizona Constitution requires.
- There are 237 school districts in Arizona. Only 28 of these districts are permitted to participate in the Career Ladder Program.
- Gilbert Public Schools has filed a complaint in Superior Court to challenge the constitutionality of the Career Ladder Program.

Career Ladder Program at a glance

The Career Ladder Program is a performance-incentive based program established under Arizona law that is used to increase teacher salaries in Arizona. The state authorized over \$74 million in funding last year to reward teachers for professional development and student achievement. Unfortunately, out of 237 school districts in Arizona, only 28 have been allowed to participate – *the program is closed to the remaining 209*. Districts shut out of the Career Ladder Program lag behind in funding for teacher compensation and, as a result, are at a disadvantage when it comes to attracting and retaining good and experienced teachers.

The Career Ladder Program was first created by the Arizona Legislature more than 20 years ago. However, since 1994, and despite original plans to extend the program statewide, the Arizona Legislature has not appropriated the additional funding to allow this to happen.

How is it funded?

Funding for the program is allocated by a formula based upon student count. Once the program is fully implemented, Career Ladder districts increase their base funding level by 5.5%. Funding is derived from state appropriations and local property taxes. In 2006-2007, the 28 Career Ladder districts were allowed to budget an additional \$74 million for the program, more than \$38 million of which came from State appropriations.

Why is it unconstitutional?

The Arizona Constitution requires that Arizona's public school funding system be "general and uniform." The Legislature is required to provide sufficient funds to educate children on substantially equal terms. The Career Ladder Program causes significant disparities in funding between districts. The amount spent per pupil, therefore, is neither general nor uniform.

What is the solution?

Gilbert Public Schools has informed the Arizona Attorney General, the Superintendent of Public Instruction, and the State Board of Education of its intent to seek judicial relief. Gilbert Public Schools has pursued additional appropriations for the Career Ladder Program at the Arizona legislature, but with no success. As promised, Gilbert Public Schools has filed a complaint with the Superior Court on October 1st, 2007.

Although the existing statutory scheme is unconstitutional, a performance based teacher compensation program – not unlike the existing program – should exist in a general and uniform manner. The 2008 legislative session is an ideal opportunity for Arizona policy makers to overhaul the program, appropriate adequate funding, and to allow all districts to participate.